

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 2040 of 1989

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

M/S. NARENDRAKUMAR HARIVALLABHDAS & CO.
VERSUS
MODASA MUNICIPALITY

Appearance:

MR AMIT M PANCHAL for the Petitioners
None present for Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 24/07/2000

C.A.V. JUDGMENT

1. Sick note is there of the counsel for the respondent but in view of the order which I propose to pass in this special civil application, I do not consider it necessary to adjourn this matter.

2. The petitioners-traders are making grievance in this special civil application that the action of the respondent to collect octroi duty on plywood as furniture and aluminium pipe under the entry other than entries No.41 and 35 (b) is wholly illegal and arbitrary. On 21st December, 1989, this court has protected the petitioners by grant of interim relief, which reads as under:

Taking into consideration Item NO.41 of the Schedule prescribed by the Modasa Nagar Panchayat (now Municipality) for collecting octroi duty which provides for levy of Octroi on furniture, it is clear that the respondent-Municipality cannot collect octroi duty on "plywood" as "furniture".

As contended by the respondent-Municipality, there is no specific entry for the plywood.

Hence, respondent-Municipality is directed not to collect octroi duty on plywood on the basis of Item No.41 in the Schedule prescribed by it for collecting octroi duty. It would be open to the Municipality to collect octroi duty on "plywood" on the basis of relevant entry. For aluminium pipes, respondent would collect octroi duty as per Item No.35 (b) of the schedule.

This order is subject to the result of the petition. Petitioners are directed to maintain separate accounts for the items which they may bring within the limits of Modasa Municipality from today.

3. In the matter of this nature, I fail to see any justification in the approach of the petitioners directly to this court. These collections are made at the octroi posts by the employees and if the petitioners are not satisfied by this collection, then first they have to approach to the Municipality itself. Still if the Municipality is not in agreement with their grievance, then they have appropriate remedy to approach to the Collector under section 259 of the Gujarat Municipalities Act or to the Director of Municipalities. Against the order of the Collector or the Director of Municipalities, the petitioners have a remedy to approach to the State Government in revision. That precisely has not been done in the present case.

4. In the result, this special civil application is disposed of in terms that for the grievance of the petitioners first they have to make a detailed representation to the Modasa Municipality and if such a representation is made then the Modasa Municipality, if it is in existence, to decide the same in its meeting called for this purpose and where it is superseded, by the Administrator. If the grievance of the petitioners is not acceptable, a reasoned order may be passed and copy of the same may be sent to the petitioners. Till this exercise is undertaken and completed by the respondent-Municipality, the interim relief which has been granted by this court shall continue. This interim relief shall stand vacated after 15 days of the date of communication of the order by the Municipality to the petitioners. Against that order, the petitioners have a remedy of approaching to the Collector of the District concerned or the Director of Municipalities and against the order of those authorities to the State Government. This special civil application and Rule stand disposed of accordingly with no order as to costs.

zgs/-